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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,726	04/21/2004	Jules S. Cohen	MSFT-3955/148481.02	4779

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EXAMINER

JEAN, FRANTZ B

ART UNIT	PAPER NUMBER
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2151

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/828,726

Applicant(s)

COHEN ET AL.

Examiner

Frantz B. Jean

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31 and 32 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 and 7 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06/21/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to application for patent filed 04/21/04. Claims 1-7 and 31-32 are presented for examination. This application is a divisional of application 09/768,446 filed on 01/24/01.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 6/21/04 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Specification

The disclosure is objected to because of the following informalities: on page 3 of the disclosure the link "www.msn.com" is written without a bracket. See MPEP form paragraph 7.29.04.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

the claimed invention is directed to non-statutory subject matter. Claim 8 discloses computer-readable medium. The specification, on page 7, second paragraph, defines communication medium as signal such as carrier wave and so on. Therefore, Claim 8 is non-statutory as not being tangibly embodied in a manner so as to be executable.

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During patent examination, the pending claims have been "given their broadest reasonable interpretation consistent with the specification." In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,3 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang et al. (hereinafter, "Wang") US patent Number 6,742,028.

As per claim 1, Wang teaches a method of migrating data items, each of said data items being associated with an identifier (see abstract; col. 3 lines 28-35), said method comprising the acts of: storing an adjustable throttle value (col. 4 line 62 to col. 5 line3; fig 4, 6-7; col. 6 lines 29-65 discuss storage of incremental/adjusted value); for a first of said data items, computing a first index value based on an identifier associated with said first data item and determining that the relationship between said first index value and said throttle value meets predetermined criteria (col. 10 lines 43-52 and line 65 to col 11 line 5 discusses calculation/computing of hash value; furthermore, values were compared to satisfy certain criteria); and copying said first data item to a data store

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(updates and copies of all data element are maintained or transmitted to the master storage /database; see col. 10 lines 43-52).

As per claim 3, Wang teaches a method of claim 1, further comprising the acts of: for a second of said data items, computing a second index value based on an identifier associated with said second data item (col. 10 lines 43-52; line 65 to col 11 line 5); determining that the relationship between said second index value and said throttle value does not meet said predetermined criteria (col. 7 lines 18-21 discusses when the system fails to meet the predetermined criteria, the value is incremented and operation is resumed); and leaving said second data item in its current location without copying said second data item to said data store (this limitation is inherent in Wang; in other words, if the requirement is satisfied data is copied, however, if the required criteria is not met, data is not copied) .

As per claim 7, it is directed to a computer-readable medium having computer-executable instruction, which contains the same limitation as discussed in claim 1 above. Therefore, it is rejected under the same rationale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wang.

As per claim 2, Wang increment the IP address to meet the needed requirement (col. 7 lines 18-21). However, Wang does not discuss that the predetermined criteria comprises a determination that said first index value is less than said throttle value. It would have been apparent to one of ordinary skill in the art at the time of the invention to require the index value be either less or higher than the other value in order to satisfy the needed criteria.

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of Hendrickson et al. (hereinafter, Hendrickson) US patent Number 6,625,622.

As per claim 4, Wang does not explicitly teach providing a web page to a first one of the computing device based at least in part on information copied to a data store.

Hendrickson is directed to a method for relocating application programs, settings, menus, files and documents (see abstract). Hendrickson system comprises the step of displaying/generating a report upon completion or based of the information migrated (fig

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7b; col. 12 lines 27-65). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Hendrickson's web page display based on a data copied with Wang's method because it would determine that data migration or software installation was successful. It would have been apparent to a skill artisan at the time of the invention to incorporate Hendrickson's feature into Wang's system in order to test and finalize the migration process.

As per claim 6, Hendrickson teaches a method of claim 1, wherein each of said data items has a flag associated therewith, each flag being adapted to assume either a set or an unset state, and wherein said method further comprises: determining that the flag corresponding to said first data item is in the unset state (col. 9 lines 37-50 and col. lines 58-67 discuss about flag).

Allowable Subject Matter

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 31-32 are allowed over the prior art of record.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record to Wang and Hendrickson fail to explicitly teach the following combined limitations as written: means for storing an operator-adjustable value; means for selecting a group of users of said web site based on an identifier

associated with each of said users and further based on said operator-adjustable value; means for transferring data from the selected users' computing devices to a data store; means for adjusting said operator-adjustable value downward; means for de-selecting at least some of the selected users in response to the downward adjustment of said user-adjustable value; and means for rendering a web page based at least in part on data stored on the de-selected users' computing devices

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571 272 3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



FRANTZ B. JEAN
PRIMARY EXAMINER

Frantz Jean